

Appeal from decision of Wyoming State Office, Bureau of Land Management, dismissing protest of designation of wilderness study areas. WY-030-401 and WY-040-408.

1. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

2. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

APPEARANCES: Robert D. Buettner, Esq., Legal Department, Koch Industries, Inc., for appellant; Bruce Hamilton, Sierra Club Northern Great Plains Office, Lander, Wyoming, for the intervenor, Sierra Club; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Koch Industries, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 22, 1981, dismissing its protest of the designation of two adjacent inventory units, WY-030-401 (Adobe Town) and WY-040-408 (Adobe Town), situated, respectively, in the Rawlins and Rock Springs districts, as wilderness study areas (WSA's). 1/

On November 14, 1980, the BLM State Office published its final intensive inventory decision in the Federal Register, in part designating 33,000 acres in unit WY-030-401 (Adobe Town) and 52,710 acres in unit WY-040-408 (Adobe Town) as WSA's. 45 FR 75606 (Nov. 14, 1980). By letter dated December 12, 1980, appellant protested designation of the two units as WSA's, contending that the areas lacked the requisites of naturalness and an outstanding opportunity for solitude. The letter referenced "[s]pecific data supporting the foregoing reasons" contained in: (1) "A Land Use Inventory of the Adobe Town Wilderness Study Area" prepared for appellant by Camp, Dresser & McKee, Inc. (CDM), and submitted to BLM with a cover letter dated May 11, 1979, from C. D. McCormick, Exploration Manager, Koch Exploration Company; (2) a letter to the State Director, BLM, from C. D. McCormick, Exploration Manager, Koch Exploration Company, dated March 4, 1980; (3) a letter to the State Director, BLM, from Robert D. Buettner, Esq., Legal Department, Koch Industries, Inc., dated August 18, 1980; and (4) oral comments made at public meetings conducted by BLM on March 15 and 22, 1979, and June 4 and 5, 1980.

For purposes of clarity, we will summarize the facts and arguments offered by appellant in its letter of protest and supporting documents because it adopts these same arguments on appeal. Appellant argued that BLM ignored or overlooked significant man-made intrusions, argued that BLM ignored or overlooked significant man-made intrusions, which allegedly compromised the naturalness of the area, notably,

1/ In its brief in intervention, the Sierra Club argues that appellant lacks standing to bring the appeal because it is not "adversely affected" by the BLM decision, as required by 43 CFR 4.410. We disagree. Appellant is the owner of Federal oil and gas leases within the Adobe Town units. One of the well sites is in active production. Further, appellant has a projected development program for the area, involving drilling, pipelines, and access routes (Letter to State Director, BLM, from C. D. McCormick, Exploration Manager, Koch Exploration Company, dated Mar. 4, 1980). The potential conflict inherent in designation of the area as a WSA as a result of interim management, to be undertaken pursuant to section 603(b) of FLPMA, 43 U.S.C. § 1782(b) (1976), is sufficient to confer standing on appellant under 43 CFR 4.410. See California State Lands Commission, 58 IBLA 213 (1981); Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981).

earthen reservoirs, ways and "roads," ^{2/} fences, and active and abandoned oil and gas well sites. It stated that these intrusions were made more visible due to the lack of topographic relief or vegetative cover, and that these intrusions were documented in the CDM land use inventory. This inventory was based on a literature search, personal interviews with local ranchers, and a field investigation. As summarized in the accompanying cover letter dated May 11, 1979, the inventory turned up evidence of "many roads * * * which are maintained by passage of ranchers' vehicles on a fairly regular basis during the winter to spring months" (Letter to State Director, BLM, from C. D. McCormick, Exploration Manager, Koch Exploration Co. at 1). However, only "[r]oads B, F and parts of E * * * showed definite signs of blading and/or mechanical maintenance." *Id.* The inventory also noted the presence of seven earthen reservoirs built by BLM and used by wildlife and by ranchers as a source of water for livestock. Also present were two active gas wells, the Adobe Town #1 situated in sec. 20, T. 15 N., R. 97 W., sixth principal meridian, and the Haystack #1 situated in sec. 28, T. 14 N., R. 96 W., sixth principal meridian, and other abandoned well sites. Appellant also pointed out that BLM failed to consider the likelihood of future intrusions due to required maintenance of earthen reservoirs and the development of State-owned lands and/or minerals, located entirely within the Adobe Town units.

Appellant maintained that there was no evidence that the area of the Adobe Town units designated as "plains and flats" (83 percent of the total area) had any outstanding opportunity for solitude. The lack of such an opportunity was due, appellant contended, to the lack of topographic relief or vegetative cover. Appellant stated that BLM admitted as much, with respect to the area between Skull Creek Rim and Willow Creek Rim, in its inventory report. ^{3/} Appellant noted that BLM considered an outstanding opportunity for solitude to be present in the

^{2/} Appellant specifically states that BLM ignored the road "which runs across the unit from the Manual Gap roads * * * in the northeast corner of Sec. 10, T. 15 N., R. 77 W., southwest for nearly four miles and intersecting the recognized east/west road in the southwest corner of Sec. 28, T. 15 N., R. 97 W.," the access road to the Adobe Town #1 well and other well site roads (Letter to State Director, BLM, from Robert D. Buettner, Esq., Legal Department, Koch Industries, Inc., dated Aug. 18, 1980, at 2). The Jan. 22, 1981, BLM decision, however, states that these roads were "clearly and correctly mapped by BLM" (Decision at 4).

^{3/} Appellant quoted from the following passage in BLM's inventory report, prepared in the early part of 1980, at page 12:

"The remaining area east of Skull Creek Rim consists of a level to gently rolling plain and Willow Creek Rim. The plain is nearly free of buttes and does not afford the solitude that the remaining area does. Willow Creek Rim is narrow for the most part and does not afford the opportunities for solitude found in the remaining unit. The nearly flat area just west of Willow Creek Rim in particular does not provide screening for the visitor due to lack of topographic variation or high vegetation. Intrusions such as the Willow Creek Rim Road detract from the solitude of the area."

area designated as "badlands" (17 percent of the total area). Appellant stated, however, that many of the "badlands" are too narrow to afford such an opportunity.

Appellant also argued that BLM based its decision that the Adobe Town units contained an outstanding opportunity for a primitive and unconfined type of recreation solely on the "challenge" offered by the area. Appellant stated that it did not believe such a finding could be based solely on "inconvenience and discomfort."

Appellant further contended that the Adobe Town units could not be considered to have either an outstanding opportunity for solitude or a primitive and unconfined type of recreation because they are not unique; but, rather, are "like much of Wyoming and other parts of the West" (Letter to State Director, BLM, from C. D. McCormick, Exploration Manager, Koch Exploration Company, dated May 11, 1979, at 2).

In its January 22, 1981, decision, BLM addressed appellant's protest. 4/ While BLM denied the protest, it responded at length to the points raised by appellant, and it also explained how information submitted by appellant during the intensive inventory had been utilized by BLM in arriving at its final intensive inventory decision which resulted in over 30,000 acres being dropped from these units. 5/ BLM stated specifically that it had examined each earthen reservoir in the field and, noting that all were "at least partially overgrown with native vegetation," concluded that their impact was "local and

4/ BLM, however, stated that because the letter from appellant dated Mar. 3, 1980, purported to review a "preliminary draft" of BLM's inventory report, which was subsequently changed in significant measure, it would not respond to the information provided by that letter (Decision at 1). On appeal, appellant makes much of that admission, contending that it reveals the "anti-development" bias of BLM, which it alleges was evident in the preliminary draft and which it argues BLM sought to conceal. We can find no evidence of bias on the part of the BLM State Office in its conduct of the wilderness inventory of the Adobe Town units. Moreover, we cannot conclude that BLM was biased based only on appellant's bare assertions.

5/ The Apr. 1, 1980, inventory report at page 6 sets forth those areas as follows:

"Field investigations by personnel from the Rawlins and Rock Springs District offices led to three major and one minor boundary adjustments. Those four areas dropped are as follows:

A. Shepherd Plain	7,450 acres
B. Manuel Gap	1,040 acres
C. East Rawlins-Willow Creek Rim	22,000 acres
D. South Monument Valley	480 acres
TOTAL	30,970 acres

These areas are shown on Map #3 in yellow. The areas are labeled A-D as above."

minor" 6/ (Decision at 2). BLM also stated that it had conducted an extensive inventory of all of the roads in the Adobe Town units, including those identified by appellant. A number of roads were designated as ways due to the lack of any indication of maintenance and were not thought to constitute a significant intrusion. A large number of the "roads" identified by appellant, however, were designated as roads:

Using the lettering system found in the CDM report, you will note that we eliminated from future wilderness study the roads and ways identified, as A, B, C, D, F, G, L, M, N, O, P, Q, R, S, T, and the portion of E which divides the North and South Adobe Town WSA's. Also, a portion of route K was eliminated. Other remnants of "jeep trails" were also eliminated. Recognition of the above as being roads or significant intrusions resulted in BLM dropping in excess of 30,000 acres from further wilderness consideration.

(Decision at 4).

BLM also commented at length on the question of an outstanding opportunity for solitude:

You note the figures 17 percent "badlands" and 83 percent "plains and flats" as a breakdown of topographic types. We have dropped nearly 31,000 acres from the inventory unit. Therefore, using your own figures, the breakdown between badlands and plains would be nearer 25 percent and 75 percent, respectively. A check of the map you submitted to our office classifying the area as either badlands or plains indicates that you left out a fairly large area which is badland type topography. Examples are Monument Valley, portions of Skull Creek Rim, and the upper tributaries of Sand Creek. We indicate that outstanding opportunities for solitude are clearly available in Adobe Town Rim, the Monument Valley area, Skull Creek Rim, and the tributaries of Sand Creek. This makes up a considerable amount of area, much more than the 17 percent you indicate. In actual fact, if one were to add the acreage of the topographic types described in the inventory as providing an outstanding opportunity for solitude, they would constitute the majority of the area. Again, the areas indicated are Adobe Town Rim, the Monument Valley area, Skull Creek Rim, and the upper tributaries of Sand Creek. Those include, among others, Skull Creek and Haystack Wash.

6/ BLM characterized the reservoirs as "wildlife enhancement facilities," which may be permitted in a WSA without detracting from its character as natural (Decision at 2). See Wilderness Inventory Handbook (WIH), dated Sept. 27, 1978, at 13.

(Decision at 6). With respect to the Willow Creek Rim area, BLM stated:

You will recall that, with regard to the area around Willow Creek Rim, we have dropped 22,000 acres from further consideration. This area was dropped primarily because of intrusions coupled with the fact that, by itself, it did not offer outstanding opportunities for solitude. The upper portion of the Willow Creek Rim area contains some badland areas and tributaries of Sand Creek (Haystack Wash, etc.). As shown in the maps in the inventory report, it has been retained for wilderness study.

(Decision at 6).

In its statement of reasons for appeal, appellant largely reiterates its contention that there is "overwhelming" evidence that the Adobe Town units do not possess the requisite wilderness characteristics of naturalness or an outstanding opportunity for solitude or a primitive and unconfined type of recreation. Appellant states: "The record thoroughly reflects this and accordingly, Koch will not, in this document, restate and review its facts and arguments." Appellant requests a hearing pursuant to 43 CFR 4.415, "on questions of facts involved in this appeal."

The BLM decision was made pursuant to section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (1976), which provides, in relevant part, that: "[T]he Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 [16 U.S.C. § 1131 (1976)]." From time to time thereafter, the Secretary is required to report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness. Congress will make the final decision with respect to designating wilderness areas, after a recommendation by the President. 43 U.S.C. § 1782(b) (1976).

The wilderness review undertaken by the State Office pursuant to sections 201(a) and 603(a) of FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. The BLM decision marks the end of the inventory phase of the review process and the beginning of the study phase.

7/

7/ In its brief in intervention, the Sierra Club maintains that the Jan. 22, 1981, BLM decision was not "final" and was, therefore, not appealable to the Board. Intervenor maintains that a "final" decision is that which makes a final determination as to the status of the land, citing Solid Rock Ministries, Inc., 10 IBLA 169 (1973). Intervenor argues that BLM, by its decision, has not finally determined the status of the Adobe Town units, but, merely, advanced the units into the next phase of the wilderness review process. While it is true

The key wilderness characteristics described in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131 (1976), which are assessed during the wilderness review process are size, naturalness, and either an outstanding opportunity for solitude or a primitive and unconfined type of recreation. See WIH at 6.

[1] The criteria of naturalness is satisfied where the imprint of man's work is "substantially unnoticeable," as set forth in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976). The Act does not require that the hand of man be completely unnoticeable. Moreover, BLM also assesses the "possibility of an area returning to a natural condition" as part of the inventory process. See WIH at 14. If it is "reasonable to expect the imprint of man's work to return or be returned to a substantially unnoticeable level either by natural processes or by hand labor" (WIH at 14, emphasis added), an area may be further considered for designation as a WSA.

The record indicates that BLM considered all of the imprints of man noted by appellant and eliminated a substantial portion of the Adobe Town units on this basis. See Inventory Report at 7-8. BLM concluded that the remaining "scattered minimal evidence of man's activities" were obscured by visual distances, topography, and vegetation (Inventory Report at 10). The report stated:

The intrusions remaining within the * * * [units] consist primarily of seven plugged and abandoned well sites, one active gas well * * * some small stockwater reservoirs, and several ways. The cumulative effect of these intrusions is not severe and they are so few and far between that some intrusions could be detected only during aerial reconnaissance. The plugged and abandoned wells cannot be seen until one is virtually on the well location.

Reclamation procedures were completed at each site and there is evidence that natural processes are and will continue to obliterate any evidence of activity other than the dry hole well markers themselves. * * *

Of the manmade earthen reservoirs within the final unit boundary, none has received maintenance since its construction, although maintenance could be required in

that the final status of the units has not been determined, each phase of the review process entails certain conclusions as to the suitability or unsuitability of an area for preservation as wilderness. The end of the intensive inventory phase results in a determination, whether an area possesses wilderness characteristics. One adversely affected by such a determination has the right to appeal. See California State Lands Commission, supra; Union Oil Co. (On Reconsideration), supra; see also Jerry D. Reynolds, 54 IBLA 300 (1981) (initial inventory decision).

the future. The presence of these reservoirs is not a significant detriment to apparent naturalness, though they are clearly manmade. They do not compromise the natural character the areas possess and most of the disturbed area around them is being encroached upon by native vegetation.

Several ways were identified within these two sub-units, some of which are over two miles long. Their effect, cumulative and individual, is insufficient to compromise the natural appearance of these areas. All ways shows signs of deterioration and natural processes have virtually obliterated many portions. Local topography and vegetation further obscure the existence of these ways to the extent that many are inconspicuous unless directly underfoot.

Id. 8/

Assessing the naturalness of an area necessarily involves making highly subjective judgments. In Conoco, Inc., 61 IBLA 23, 28 (1981), we stated that BLM's judgment in such matters is entitled to considerable deference. An appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome that deference. City of Colorado Springs, 61 IBLA 124 (1982); C & K Petroleum, 59 IBLA 301 (1980). We have carefully reviewed the record in this case and find that BLM gave full and adequate consideration to the concerns raised by appellant. On appeal appellant has done nothing more than reiterate those same concerns. These expressions of disagreement are not sufficient to establish error in the BLM decision.

BLM's assessment of the opportunities for solitude or a primitive and unconfined type of recreation divided the Adobe Town units along topographic lines. The areas characterized as "badlands," namely, Skull Creek Rim, Adobe Town Rim, Monument Valley, and the upper Sand Creek Basin, were felt to present outstanding opportunities due to their unique topographic diversity and quality. The inventory report stated at page 12:

These features provide abundant opportunities to avoid the sights and sounds of other users. The rugged rock formations in the badlands, canyons, and rims provide exceptional natural screening. The quality and diversity of colors, shapes, and forms provide a scenic grandeur and a feeling of remoteness that clearly provides the visitor with outstanding qualities of solitude.

8/ The future impact of maintenance of earthen reservoirs and development of State-owned lands and/or minerals is not properly considered during the inventory phase of the wilderness review process, but, rather, should be addressed during the study phase. Union Oil Co. (On Reconsideration), supra at 170.

The opportunities for a primitive and unconfined type of recreation included hiking, photography, and sightseeing. Id. at 14. BLM described these "core" areas as the focal point of the units. The outlying "plains and flats" were felt to present only marginal opportunities for solitude or a primitive and unconfined type of recreation. BLM stated, however, that the badlands "make up the bulk of the lands in the Rock Springs unit (WY-040-408) and a sizeable part of the Rawlins * * * unit (WY-030-401)" (Inventory Report at 12).

Appellant has not presented sufficient evidence that the Adobe Town units do not possess outstanding opportunities for solitude or a primitive and unconfined type of recreation. Appellant's assertion that such opportunities may only be available in a portion of the units will not suffice. As stated in OAD No. 78-61, Change 3, at 3:

A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding opportunity criterion. Obviously, there must be an outstanding opportunity somewhere in the unit. [Emphasis in original.]

As we have previously stated in Tri-County Cattlemen's Association, 60 IBLA 305, 309 (1981), outstanding opportunities need not be available at all times in all parts of the unit. Appellant's assertion that large parts of each unit do not contain outstanding opportunities is not persuasive that BLM erred in its determination. Even accepting appellant's contention as fact does not require reversal of BLM's determination that outstanding opportunities are available in each unit.

[2] The decision to designate an area as a WSA will be affirmed in the absence of compelling reasons for modification or reversal. The burden of showing error of fact or law is on one challenging the decision. City of Colorado Springs, supra; Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). More than mere disagreement with BLM's conclusions is required to reverse BLM's decision or place a factual matter at issue. L. J. Cornelius, 61 IBLA 279 (1982); Sierra Club, 53 IBLA 159, 164 (1981).

In the present case, appellant has failed to offer compelling reasons for disturbing BLM's assessment of the wilderness characteristics of the Adobe Town units. It has not shown that BLM did not adequately consider all of the factors involved. City of Colorado Springs, supra. 9/ We must conclude that BLM properly dismissed appellant's protest. Appellant's request for a hearing is denied.

9/ Appellant's underlying concern appears to be that the vast majority of the area in these two units is more valuable for resource development than for preservation as wilderness. We note that during the study phase BLM may modify the boundaries of the units to reflect considerations based on management concerns and the competing land uses and resources in the units. Appellant may provide comments to BLM during the study phase.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

